

State of Utah
Administrative Rule Analysis

NOTICE OF 120-DAY (EMERGENCY) RULE

The agency identified below in box 1 provides notice of a 120-day (emergency) rule pursuant to Utah Code Section 63-46a-7. Please address question regarding information on this notice to the agency.

DAR file no:	27222	Date filed:	6/9/2004	
Utah Admin. Code ref. (R no.):	R414-1B	Time filed:	5:28:47 PM	

1. Agency:	Health/Health Care Financing, Coverage and Reimbursement Policy			
Room no.:				
Building:	CANNON HEALTH BLDG			
Street address 1:	288 N 1460 W			
Street address 2:				
City,state,zip:	SALT LAKE CITY, UT 84116-3231			
Mailing address 1:	PO BOX 143102			
Mailing address 2:				
City,state,zip:	SALT LAKE CITY, UT 84114-3102			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Doug Springmeyer	801-538-6971	801-538-6306	dspringm@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2.	Title of rule or section (catchline): Prohibition of Payment for Certain Abortion Services
3.	Effective Date (mm/dd/yyyy) : 6/9/2004
4.	Purpose of the rule: S.B. 68, which passed during the 2004 Legislative session, prohibits the direct or indirect funding of certain abortions with public funds. Medicaid providers requested clarification of certain aspects of the law. (DAR NOTE: S.B. 68 (2004) is found at UT L 2004 Ch 271, and was effective 05/03/2004.)
5.	Summary of the rule change: This rule implements the law by a) creating a standardized mechanism for Medicaid providers to certify compliance with the law and b) establishing accounting methodologies that providers can consider to justify their certification.
6.	Regular rulemaking would: <input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or <input type="checkbox"/> place the agency in violation of federal or state law. Specific reason and justification: Certain hospital providers have stopped offering selected surgical services to Utah women until this law is clarified through this rule. Delaying implementation until a routine rule filing can be completed meets the requirements of Subsection 63-46a-7(1) and justifies this rule

	filing.
7. Aggregate anticipated cost or savings to:	
A) State budget:	The Department will experience minimal costs to produce the certification form and track filing of the form. This can be handled within existing budgets.
B) Local government:	The Department does not believe that local governments will be providing services impacted by S.B. 68. No costs are anticipated for local government.
C) Other persons:	Health care providers that perform services such as pregnancy terminations for grave fetal defects will be required, upon submitting a claim for reimbursement to a Department program, to certify compliance with SB 68. This rule should save providers significant expense by setting forth a basis to support that certification. Exact costs are impossible to determine and will vary by provider type.
8. Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):	Each provider billing Department programs for services covered by S.B. 68 will be required to file a one time certification with the law. The cost of this filing, along with the necessary accounting practices to support that certification will vary by provider type and are impossible to determine.
9. Comments by the department head on the fiscal impact the rule may have on businesses:	Several hospitals approached the Department in mid-May and requested this rulemaking to help them with compliance with S.B. 68. This rule is the result of that request and reflects input from many sources. This rule will allow Utah hospitals and doctors to resume services related to grave fetal defects, if they choose. Costs should be reduced by the rule as a result of creating a standard which providers may choose to adopt for supporting their certification. Scott D. Williams, MD
10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):	Sections 63-46a-7, 26-1-5, and 26-18-3
11. This rule adds, updates, or otherwise changes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):	
12. Indexing information - keywords (maximum of four, in lower case):	Medicaid, hospital, physician, abortion
13. Attach an RTF document containing the text of this rule change (filename):	There is currently a document associated with this filing. Rule Text
To the agency: Information requested on this form is required by Section 63-46a-4,7, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the <i>Utah State Bulletin</i> .	

AGENCY AUTHORIZATION

Agency head or designee, and title:	Scott Williams Executive Director	Date (mm/dd/yyyy):	6/9/2004
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R414. Health, Health Care Financing, Coverage and Reimbursement.

R414-1B. Prohibition of Payment for Certain Abortion Services.

R414-1B-1. Introduction and Authority.

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in Utah Code Section 76-7-326. It is authorized by Utah Code Sections 26-1-5 and 26-18-3.

R414-1B-2. Definitions.

(1) "Abortion billing code" means the following codes:

(a) 59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the Current Procedural Terminology (CPT) manual of the American Medical Association, 2003 edition; and

(b) 69.01, 69.51, 74.91 and 75.0 as shown in the International Classification of Diseases, 9th Edition, Volumes 1 and 2, Clinical Modification, Volume 3 Procedures.

(2) "Certification" or "Certify" means submitting to the Division of Health Care Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money provided by the state, its institutions or its political subdivisions. "Public funds" does not include (i) clinical revenue generated from nongovernmental payors.; (ii) gift or donor provided funds; (iii) investment income; or (iv) federal funds appropriated by the legislature.

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004 must certify that funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant women provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Utah Code section 76-7-326 and to assess whether it receives public funds for any abortion that is not excepted in subsections (a), (b), or (c) of Utah Code subsection 76-7-326(2).

(2) A provider meets the requirements of this rule if it certifies that it is able to demonstrate that:

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

KEY: Medicaid, abortion, physicians, hospitals

June 9, 2004

26-1-5

26-18-3